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STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

Memorandum

To: LUPC Commissioners

From: Ben Godsoe, Senior Planner
Hugh Coxe, Chief Planner

Date: May 1, 2015

Re: Proposed Rule Change to Designate Areas of Cultural or Special Significance

Introduction

Over the past few months staff has worked to develop a proposed rule that would allow the Commission to designate Areas of Cultural or Special Significance (DACSS). Within a DACSS, property owners could take advantage of the designation to apply for a permit to reconstruct or expand legally existing, nonconforming structures, provided that proposed reconstruction projects conform to the purpose of designation.

How we got here

- On May 23rd, 2014, a fire near the outlet to West Grand Lake in Grand Lake Stream Plantation badly damaged three boathouses, burning two of them down to the waterline and damaging a third beyond repair.
- The Commission discussed the boathouses that had burned at the November 12th, 2014 meeting. The owners of the boathouses, local organizations, and community leaders requested that the Commission allow the iconic structures to be rebuilt due to their historic significance and because they provided some public benefits for the town. The Commission directed staff to explore options to allow the boathouses to be reconstructed in place.
- In considering alternative approaches, staff saw value in choosing a solution that could provide benefits for other areas in the UT that are culturally or specially significant.

- On January 14th staff presented initial information about the proposed rule to allow Designation of Areas of Cultural or Special Significance for consideration and discussion. On February 11th the Commission voted to post the proposed rule for a 30 day public comment period.

Public Comments and Staff Recommendations

The public comment period remained open until April 3rd. There were two comments received during the official comment period. Additionally, one comment came in late but is mentioned in the Basis Statement.

Comments received during the official comment period suggest that the proposed location of procedural elements of the rule within Chapter 10 is confusing. Staff concur and recommend moving the location of procedural elements of the proposed rule from Chapter 10, Section 25,E,3, to Appendix G. This will group the designation process with the list of designated areas and make the rule more accessible for petitioners.

Other comments recommend that the rule language be changed to ensure adequate notification of property owners within a DACSS upon initiation of a petition to designate an area. Staff concur and recommends that the rule be revised to specify that property owners within a proposed DACSS be notified of a petition to designate an area (Chapter 10, Appendix G, Section 1,c). The first petition for designation of an area in Grand Lake Stream Plantation will be considered at the May Commission Meeting, and staff will notify landowners within the proposed area.

The same commenter expressed concern that the proposed rule would restrict private property rights. The purpose and intent of the rulemaking is to provide property owners greater flexibility; the rulemaking will not interfere with or limit existing property rights. The proposed rule language specifies that:

“Designation of an area does not preclude expansion, reconstruction or replacement, or relocation of legally existing nonconforming structures in accordance with other applicable provisions of Chapter 10, Section 11.”

Request for Commission Action: Staff recommends that the Commission adopt the Designated Areas of Cultural or Special Significance rule revisions and basis statement.

Attachments:

- Proposed rule revisions; and
- Basis Statement and Summary of Public Comments

Rule Revisions: Designation of Areas of Cultural or Special Significance

The following amendments to Chapter 10, Land Use Districts and Standards are for areas within the Jurisdiction of the Maine Land Use Planning Commission. This document only includes relevant sections of Chapter 10 and indicates additions in underline, and deletions in ~~striketrough~~.

APPENDIX G DESIGNATED AREAS OF CULTURAL OR SPECIAL SIGNIFICANCE (DACSS)

1. **Designated Area of Cultural or Special Significance (DACSS).** Areas of cultural or special significance may be designated by the Commission to facilitate expansion, reconstruction or replacement, or relocation of structures that provide significant public benefits to the surrounding community. A DACSS is intended to include discrete geographic areas with significant cultural or other special features. Once included in a DACSS, a structure may be expanded in accordance with Section 10.11,C,1,c, reconstructed or replaced in accordance with Section 10.11,C,2,f, and relocated in accordance with Section 10.11,C,3, of the Commission’s rules. Designation of an area as a DACSS does not preclude expansion, reconstruction or replacement, or relocation of legally existing non-conforming structures in accordance with other applicable provisions of Section 10.11.
 - a. **Designation Criteria.** The Commission shall designate an area of cultural or special significance upon finding that a proposed area meets the following criteria:
 - (1) The proposed area is an iconic location containing features that convey a sense of time or place to residents or visitors;
 - (2) The proposed area is a geographically definable area or neighborhood composed of a finite group of related features that have a special character, historical interest, or aesthetic value; and
 - (3) The proposed area provides a significant public benefit, per Section 1.b.
 - b. **Contributing Factors.** When evaluating whether an area proposed for designation provides a significant public benefit, as required by Appendix G, Section 1,c the Commission shall consider the factors listed below. The Commission may find an area provides a significant public benefit even if the area does not include features satisfying all of the factors set forth in (1) through (4) below, provided the evidence offered for a particular factor or subset of factors is compelling. In applying these factors, the Commission may consider, among other evidence, documentation such as published books, magazines, academic writings, or newspaper articles; other historic records identifying the value of the feature or area; and visual depictions such as postcards, images or paintings. The Commission also may receive testimony by persons with special knowledge about applicable factors.

- (1) Cultural: Buildings, improvements or other features that exemplify or reflect a group of people linked together by shared values, traditional uses, beliefs, and historical associations;
- (2) Historic: Represents a distinct historical period, type, style, region, or way of life; is the site of an important historical event, or is associated with historic events that have made a meaningful contribution to the nation, state, or community; or represents a specific business or use, which either once was common but now is rare, or continues to have historical value as it currently operates.
- (3) Architectural or Engineering: Exemplifies a particular architectural style or way of life, construction materials or engineering methods used to build features, or embodies elements of outstanding attention to architectural or engineering design, detail, material, or craftsmanship.
- (4) Neighborhood or Geographic Setting: The proposed area is in a unique location, or represents an established and familiar visual feature of the community that draws residents and visitors, or structures or features within the designated area include singular physical characteristics.

c. **Procedural Requirements.** In accordance with Chapter 4 of the Commission's Rules, Rules of Practice, Section 4.06, any person may petition the Commission for designation of an area as a DACSS. Petitions must be in writing and identify the area proposed for designation, specify the purpose of the proposed designation, and explain how the designation conforms with the criteria set forth in Appendix G, Section 1,a. In addition to notification requirements described in Section 4.06(5) upon receiving a petition to designate a proposed area the Commission shall notify: (i) property owners within the area proposed as a DACSS; (ii) the municipality or plantation where the designated area is proposed; (iii) the county if located in an unorganized township; (iv) appropriate state and federal agencies, to be determined by the Commission; and (v) tribal governments. Upon designation of an area as a DACSS, a description of the designated area, its purpose, and the facts substantiating the Commission's finding that the applicant satisfied the criteria in Appendix G, Section 1,a shall be listed in Appendix G, Section 2 of this chapter.

d. **Removal of Designation.** Upon petition in accordance with Chapter 4 of the Commission's Rules, Rules of Practice, Section 4.06, the Commission may remove a designation of a DACSS when the Commission finds that the DACSS no longer meets the purpose of the DACSS listed in Appendix G, Section 2, of this chapter or no longer provides a significant public benefit based on the factors in Appendix G, Section 1,b,(1) through (4).

2. **Designated Areas.** The following areas have been designated as a DACSS in accordance with the procedure described in Appendix G, Section 1.

a. None Listed

10.11 NONCONFORMING USES AND STRUCTURES

C. NONCONFORMING STRUCTURES

1. **Expansion.** A permit is required for the expansion of a nonconforming structure, except as provided in Section 10.27,P. In addition to meeting permit requirements, expansions must also comply with the following limitations. These limitations do not apply to water dependent uses as defined in Section 10.02.
 - a. **Certain Expansions Prohibited.** If any portion of a structure is located within 25 feet, horizontal distance, of the normal high water mark of a water body, expansion of that portion of the structure, which includes an increase in height or an increase in floor area, is prohibited. That portion beyond 25 feet may be expanded provided the size limitations in Section 10.11,C,1,b are met.
 - b. **Size of Structures Near Water Bodies Limited.** The maximum size of expansions of nonconforming structures is limited within areas described by either of the categories below:
 - (1) The area within 100 feet, horizontal distance, of the normal high water mark of bodies of standing water 10 acres or greater in size or flowing waters draining 50 square miles or more.
 - (2) The area within 75 feet, horizontal distance, of the normal high water mark of tidal waters or bodies of standing water less than 10 acres in size (but excluding bodies of standing water less than three acres in size not fed or drained by a flowing water).

Legally existing, principal and accessory structures located within the areas described in Section C,1,b,(1) and (2) above may be expanded subject to the other requirements of this section, provided that lot coverage limitations and other applicable land use standards are met. The maximum height of all structures within these areas shall be 25 feet, or existing structure height, whichever is greater. The maximum combined footprint for all structures within these areas may not exceed the limits in Table 10.11,C-1.

Closest Distance of Expansion from Water Body	Maximum Combined Footprint* for all Structures not Meeting Water Body Setbacks
Greater than 25 and less than 50 feet.	750 square feet.
Between 50 and 75 feet.	1,000 square feet.
Greater than 75 and less than 100 feet (if applicable setback is more than 75 feet).	1,500 square feet.

Table 10.11,C-1. Limitations on size of structures near water bodies.

- * Expansions that increase the height of a structure or increase the floor area of a structure, such as the addition of a loft or second story, require permits but are not included in the calculation of the footprint of the structure.

c. **Structures Located in a Designated Area of Cultural or Special Significance.** If legally existing, non-conforming structures that would not otherwise be permitted to expand, are located within a Designated Area of Cultural or Special Significance (DACSS) listed in Appendix G, Section 2 of this chapter, then those structures may be expanded provided that:

- (1) The proposed expansion is consistent with the purpose of the designation as described in Appendix G, Section 2 of this chapter; and
- (2) The proposed expansion is in conformance with Section 10.11,C,1,a and b.

2. **Reconstruction or Replacement.** A legally existing, nonconforming structure may be reconstructed or replaced with a permit, provided that the permit application is completed and filed within two years of the date of damage, destruction or removal; the structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal; and if the reconstruction or replacement involves expansion, the structure meets the requirements of Section 10.11,C,1, except that a legally existing, nonconforming structure located within a DACSS listed in Appendix G, Section 2 of this chapter may be reconstructed or replaced in accordance with Section 10.11,C,2,f.

a. **Meeting Setbacks to the Maximum Extent Possible.** Reconstruction or replacement must comply with current minimum setback requirements to the maximum possible extent. In determining whether the proposed reconstruction or replacement meets the setbacks to the maximum possible extent, the Commission may consider the following factors:

- size of lot,
- slope of the land,
- potential for soil erosion and phosphorus export to a water body,
- location of other legally existing structures on the property at the time of the damage, destruction or removal,
- location of the septic system and other on-site soils suitable for septic systems at the time of the damage, destruction or removal,
- type and amount of vegetation to be removed to accomplish the relocation, and
- physical condition and type of existing foundation, if any.

b. **Reconstruction of Attached Decks.** Decks attached to a legally existing, nonconforming structure may be reconstructed in place with a permit, except that replacement of any portion of a deck that extends into or over the normal high water mark is prohibited.

c. **Permanent Foundations.** The addition of a permanent foundation or the replacement of 50% or more of an existing foundation beneath a legally existing, nonconforming structure constitutes a reconstruction subject to the provisions in Section 10.11,C,2,a.

d. **Boathouses.** Except in a D-MT subdistrict or in a DACSS listed in Appendix G, Section 2 of this chapter, boathouses shall not be reconstructed or replaced. Normal maintenance and repair, and renovation of a legally existing boathouse is allowed without a permit.

e. **Sporting Camps.** A legally existing, nonconforming structure within a commercial sporting camp may be reconstructed in place, provided that the reconstruction occurs within 2 years

of damage, destruction or removal and the Commission issues a permit [see 12 M.R.S.A. §685-B(7-A)]. The Commission may, consistent with public health, safety and welfare, waive standards that made the original structure nonconforming. The reconstructed structure must replicate the original structure and use to the maximum extent possible and it must be in the same location and within the same footprint as the original structure, unless the structure is relocated in accordance with Section 10.11,C,3. Minor modifications to dimensions to the structure, including the combining of multiple structures on one lot may be allowed provided the total square footage of the structure or structures is not increased and conforms with Section 10.11,C,1,b.

A legally existing, nonconforming outpost cabin shall have the same reconstruction rights of a commercial sporting camp under Section 10.11,C,2, provided the site containing the outpost cabin is limited by permit condition for a period of not less than 10 years, requiring the site to be utilized only as an outpost cabin in conjunction with a commercial sporting camp, and the permit condition is recorded with the County Registry of Deeds where the real estate is located.

f. Structures in a Designated Area of Cultural or Special Significance. A legally existing, non-conforming structure may be reconstructed in place or replaced in place with a permit, provided that:

- (1) The structure is located in a DACSS listed in Appendix G, Section 2 at the time of damage, destruction, or removal of the structure; or within 2 years of damage, destruction, or removal of the structure, an area that includes the proposed site for reconstruction of the structure is designated as a DACSS in accordance with Appendix G, Section 1, or a petition for such designation is filed with the Commission;
- (2) A permit application is completed and filed within two years of the date of damage, destruction or removal of the structure, or within two years of the date the area that includes the proposed site for reconstruction is designated as a DACSS, whichever is later, except that the Commission may waive this requirement upon finding that unusual circumstances prevented the applicant from filing a permit application within the two-year period provided in this paragraph;
- (3) The structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal, except that the Commission may waive this requirement for good cause;
- (4) The proposed reconstruction conforms with the purpose of the designation as described in Appendix G, Section 2 of this chapter;
- (5) Reconstruction must, to the maximum extent possible, replicate the prior version of the structure that is in keeping with the designation as described in Appendix G, Section 2 of this chapter, is in the same location, and has the same footprint, as the original structure.

Minor modifications to the dimensions of the structure may be allowed provided the total square footage of the structure or structures is not increased and conforms with Section 10.11,C,1,b.

3. **Relocation.** In order to make it conforming or less nonconforming, a legally existing, nonconforming structure may be relocated within the boundaries of the lot upon the issuance of a permit, provided that the site of relocation conforms to setback requirements to the maximum extent possible as determined by the Commission in accordance with the provisions of Section 10.11,C,2,a. Cleared openings created as part of a relocation shall be stabilized and revegetated. Relocated structures that are altered such that they meet the definition of reconstruction shall meet the requirements of Section 10.11,C,2. Legally existing, nonconforming structures that are part of a commercial sporting camp or are located in a DACSS listed in Appendix G, Section 2 of this chapter, may be relocated to a site that is less nonconforming.

D. NONCONFORMING USES

1. **Expansion of Use.** Extension, enlargement or expansion of nonconforming uses requires a permit.
2. **Change in Use.** A nonconforming use may not be changed to another use without a permit.
3. **Resumption of Use.** A nonconforming use shall not be resumed if it has been discontinued or abandoned for a period exceeding two years, or if it has been superseded by a conforming use, unless it is in an area designated as a DACSS in Appendix G, Section 2 of this chapter within two years of when the use was discontinued or abandoned. Within a DACSS the Commission may waive this requirement for good cause.
4. **Special Exceptions.** Any use granted a special exception permit shall be deemed a conforming use [see 12 M.R.S.A. §685-A(10)].

10.27 ACTIVITY-SPECIFIC STANDARDS

O. PERMANENT DOCKING STRUCTURES

1. **Reconstruction of Permanent Docking Structures.**

- a. A permit for reconstruction shall not be issued unless the permanent docking structure is legally existing. For docks larger than the size limitations for new or expanded docks in Section 10.27,O,2,b, the size of the reconstructed dock must be no more than 90 percent of the size of the original structure. The dock shall be reconstructed in the same location, except as provided for in Section 10.27,O,1,d. The reconstructed structure must not extend farther into the waterbody than the existing structure. Reconstruction of a permanent docking structure shall not include reconstruction of any other structure, such as a shed or boathouse, which is attached to the docking structure, except as provided for in a (D-MT) Maritime Development Subdistrict [and in a DACSS listed in Appendix G, Section 2 of this chapter](#). Reconstructed docks must meet the construction standards in Section 10.27,O,4.

2. Normal Maintenance and Repair.

- a. In accordance with Section 10.02, normal maintenance and repair of permanent docking structures does not require a permit.
- b. Except as provided for in a (D-MT) Maritime Development Subdistrict [and in a DACSS listed in Appendix G, Section 2 of this chapter](#), boathouses and floatplane hangers may be maintained in accordance with the provisions for normal maintenance and repair in Section 10.02, but may not be reconstructed.

MAINE LAND USE PLANNING COMMISSION

Department of Agriculture, Conservation and Forestry



BASIS STATEMENT and SUMMARY OF COMMENTS

For AMENDMENTS to

CHAPTER 10: LAND USE DISTRICTS and STANDARDS REGARDING DESIGNATION OF AREAS OF CULTURAL OR SPECIAL SIGNIFICANCE

May 13, 2015

STATUTORY AUTHORITY: 12 M.R.S. § 685-A(3); § 685-A(7-A); and § 685-C(5)

EFFECTIVE DATE OF THE RULE AMENDMENT:

FACTUAL AND POLICY BASIS FOR THE RULE AMENDMENT:

The Maine Land Use Planning Commission adopts rule changes to its Chapter 10 Land Use Districts and Standards that allow the Commission to designate areas of cultural, historical, or other special significance. Within a designated area, applicants will be able to apply for a permit to reconstruct in place or expand legally existing, nonconforming structures, provided that proposed reconstruction projects conform to the purpose of designation. In designating a proposed area, the Commission will consider the unique cultural or historic characteristics of the proposed area that may benefit the public by preserving the look and feel of the community, attracting visitors and new residents, and enhancing the quality of life for residents. Once an area is designated by the Commission, its purpose, specific geographic location, and other relevant information will be recorded in an Appendix G to Chapter 10, Land Use Districts and Standards, and property owners within the designated area will be able to apply for a permit to reconstruct or replace structures in place, so long as the proposed reconstruction project conforms with the purpose of the designation.

PUBLIC NOTICE OF RULEMAKING

On February 11, 2015, the Commission voted to hold a 30-day public comment period. Notice of this rulemaking appeared in the weekly consolidated rulemaking notice on March 2, 2015. The comment period remained open until Friday, April 3, 2015, to allow interested persons to file written statements with the Commission, and for an additional 7 days until Friday, April 10, 2015, to allow interested persons to file written statements in rebuttal of statements filed up to April 3, 2015.

COMMENTS AND RESPONSES:

- 1. Topic:** One commenter was concerned that the designation process seems to be out of place in its proposed location in Chapter 10 (Section 10.25,E,3) because: 1) the proposed rule does not require a finding of no undue adverse impact like other components of Section 10.25,E; and 2) it addresses changes to legally existing, nonconforming structures as opposed to new residential or other kinds of development. The proposed placement of the new rule in Development Standards (Section 10.25, E) would be confusing.

Commenter(s): Bob Faunce, Lincoln County Planner

Response: This change is a non-substantive change. The Commission concurred and moved the procedural components of the rule revision, including the processes for petition and removal of designation, to Appendix G, which is a more appropriate location in Chapter 10. This location pairs the designation process with the list of designated areas. Additionally, it is appropriate to place these procedural elements in an appendix to Chapter 10 because each designation will only be applied in limited locations and not broadly throughout the jurisdiction.

Action(s): Relocated proposed text of Section 10.25,E,3 to Appendix G, otherwise to remain in its current form. Revised citations within the proposed rule in Section 10.11,C through D; and Sections 10.27,P,1 through 2, to accurately reflect relocation of the procedural requirements. The following illustrates this revision in one of the rule sections (Section 10.11,f,a):

- (a) The structure is located in a DACSS listed in [Appendix G, Section 2](#) at the time of damage, destruction, or removal of the structure; or within 2 years of damage, destruction, or removal of the structure, an area that includes the proposed site for reconstruction of the structure is designated as a DACSS in accordance with ~~10.25,E,3~~ [Appendix G, Section 1](#), or a petition for such designation is filed with the Commission;

- 2. Topic:** Regarding the proposed rule, it appears that the new proposed section 3 is a stand-alone section and that the 2.b (historic features) section remains unchanged.

Commenter(s): Maine Historic Preservation Commission

Response: The Commission concurred; the proposal does not affect Section 10.25,E,2,b. This comment does not call for any changes.

Action(s): No action was taken.

The following comments were submitted after the close of the public comment period. However, due to their relevance staff has included them in the Basis Statement.

3. **Topic:** One commenter urged the Commission to ensure property owners within a DACSS are notified of a petition when it comes forward. Additionally, he expressed concern that the new rule would adversely impact lease arrangements between landowners and lessees and restrict private property rights. For example, the new designation might impede a landowner’s ability to operate a hydro-electric facility or to remove structures from their property.

Commenter: Jay Beaudoin, Environmental Superintendent, Woodland Pulp LLC.

Response: The requirement that a property owner receive notice of a proposed DACSS was a technical oversight. This notice always was contemplated, although in most instances the Commission anticipates property owners will be the persons filing the designation requests. The proposed rule language does not impose additional restrictions on private property rights and “does not preclude expansion, reconstruction or replacement, or relocation of legally existing nonconforming structures in accordance with other applicable provisions of Chapter 10, Section 11.” Presently, the Commission has the statutory obligation to evaluate impacts to historic resources when issuing permits. *See* 12 M.R.S. § 685-B(4)(C). The Commission will continue to carry out this obligation, including consideration of the potential impacts to historic resources within a DACSS. The Commission, however, will not consider whether a potential historic resource is within a DACSS when evaluating potential impacts to historic resources. Whether an area is a DACSS is only relevant in the Commission’s application of Section 10.11 (Nonconforming Uses and Structures) and Section 10.27,O (Activity-Specific Standards for Permanent Docking Structures) of its Chapter 10 rules.

Action: The Commission concurred and added “property owners within the area proposed as a DACSS”, to Procedural Requirements in Chapter 10, Appendix G, Section 1,c.